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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/002,566
Filing Date: November 01, 2001
Appellant(s): WEAVER ET AL.

Dale A. Bjorkman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/23/08 appealing from the Office action mailed 3/26/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0133479	DIPPOLD	9-2002
US 2002/0082900	JOHNSON	6-2002

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US 2001/0049690

MCCONNELL et al

12-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-8, 10, 12, 15, 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson (US 2002/0082900 A1).

As per claim 6, Johnson discloses:

obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set, (Abstract, collecting market research and user trend data, w/ [0004], shows marketing data includes demographics);

using automated analysis to analyze at least a portion of said obtained data, ([0025], analyze program output ; and

providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for the intended end user, ([0037]-[0043], shows marketing and trend data in the form of a

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report, w/ [0033], solvent project/output of a web page can be generated for *each type* of solvent system).

As per claims 5/10, Johnson discloses:

dynamically including or excluding further detailed information from said report depending on whether additional analysis results are available/further including dynamically including or excluding further detailed information from said integrated category management report depending on whether additional analysis results are available, (Fig. 6, sheet 8, shows quantity can only be modified to an equal or lesser amount that was originally purchased, therefore, the features of these claims are inherent since in order to additionally modify, additional purchases must be made, and therefore additional analysis must have taken place).

As per claim 7, Johnson discloses:

delivering said report at least in part over a network, ([0037], email, w/abstract, internet).

As per claim 8, Johnson discloses:

wherein said integrated category management report includes interactive fields that can call up additional information, (Fig. 6, sheet 8, shows quantity can be modified by supplier).

As per claim 12, Johnson discloses:

wherein said network is the Internet, (abstract, Internet).

As per claim 15, Johnson discloses:

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wherein said integrated category management report includes a pricing suggestion for at least one product, ([0065], price quote).

As per claim 18, Johnson discloses:

wherein said integrated category management report includes at least one report segment selected from the group consisting of *consumer assessment*, category assessment, pricing analysis, promotion analysis, placement analysis, and product assortment analysis, ([0038], view users who have accessed module for solvent selection).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of Dippold, (US 2002/0133479 A1).

As per claim 11, Johnson does not specifically disclose the following, but does disclose analysis of a category of product such as solvents over time as shown in [0025].

However, Dippold discloses:

further including providing a score card that tracks said category management over time, (Page 3, paragraph [0033], lines 1-15, scoring rules used to choose a final category). Dippold discloses this limitation in an analogous art for the purpose of showing that categories are selected according to a scoring system.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to provide a score card that tracks said category management over time with the motivation of keeping record of the management of categories.

As per claim 20, Johnson does not specifically disclose the following, but does disclose implementation of agricultural products in claim 5.

However, Dippold discloses:

wherein at least one of said data sets relates to cereal, (paragraph 0005, lines 1-3, breakfast cereals). Dippold discloses this limitation in an analogous art for the purpose of showing that cereals are included in category groups.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for at least one of said data sets to relate to cereal with the motivation of showing that food products can also be categorized and managed.

Claims 13, 16, 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 2002/0082900 A1), as applied to claim 6 above, and further in view of McConnell et al, (US 2001/0049690 A1).

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As per claim 13, Johnson fails to disclose wherein said network is a local area network but does disclose implementing the system over the Internet, which is also an area network in the Abstract.

However, McConnell et al discloses:

wherein said network is a local area network, ([0070], LAN) McConnell et al discloses this limitation with the motivation of showing that the monitoring/tracking of sales can be done over a local area network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the network to be a local area network with the motivation of tracking products locally.

As per claims 16/17, Johnson fails to disclose the following, but does disclose product recommendations in [0025].

However, McConnell et al discloses:

Wherein said integrated category management report includes at least one suggestion for improving the sales of at least one product, (paragraphs [0199]-[0205], shows an attribute set that identifies when stock outs are excessive, and therefore periods of high seasonal sales are present, in this case an attempt to match attributes with these types of events take place in order to keep high sales, thereby changing distribution values, esp. [0025], shows product recommendations to alleviate items not selling). McConnell et al discloses this limitation in analogous art for the purpose of showing that distribution values can be changed as a result of a need to keep sales at a high level all year round.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to make at least one suggestion for improving the sales of at least one product/a category of products with the motivation of moving products through a market environment.

As per claim 19, Johnson fails to disclose wherein said data sources further include at least one planogram, but does disclose the generation of product information in [0022].

However, McConnell et al discloses:

wherein said data sources further include at least one planogram, (Page 24, Col. 1, lines 4-8 [claim 47], shows at least one planogram type is used in conjunction with correlating items). McConnell et al discloses this limitation in an analogous art for the purpose of showing that planograms, which is no more than a diagram of a product display that can be used in conjunction with monitoring or tracking sales).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include at least one planogram with the motivation of using a diagram of a product display to manage products.

(10) Response to Argument

As per claims 5-8, 10, 12, 15, and 18, appellant argues that the Johnson system does nothing to provide a report to increase sales or profits of a retailer in a market category, and that it only provides data useful to individual suppliers to try to sell their own product to the disadvantage of other suppliers. However, appellant's claims do not discuss increasing sales or profits of a retailer in a market category. Independent claim

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6, discloses the following steps: “obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set”, “using automated analysis to analyze at least a portion of said obtained data”, and “providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for an intended retailer end user”.

Nowhere in claim 6, or any of the other claims that directly or indirectly depend from claim 6 disclose increasing sales or profits of a retailer in a market category, and therefore, appellant's argument is moot.

Appellant also argues that in Johnson, no retailer is provided with an integrated category management report. However, Johnson discloses marketing *and* trend data in the form of a report in [0037]-[0043]. Specifically in [0037], it is shown that a supplier can obtain market and trend data in the form of a report. This market and trend data is shown to include a view of users by numbers and percent of totals that ask that a solvent be replaced, included, or excluded, and also shows samples of requests for 24-month rolling samples of totals of samples ordered by users. Since this report shows both market and trend data on the same report, it is considered an integrated report. In addition, the category is represented by the particular solvent that is asked to be replaced, included or excluded. In addition, the supplier is the retailer since it provides goods in the form of a product as shown in [0036], where it shows that the supplier information includes type of products and applications supplied, supplied region, and type of quantities supplied. Since the user can request a price quotation from a supplier

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for the solvent (product) as shown in [0034], this means that the product can be sold, thereby reinforcing that the supplier is a retailer.

Appellant also argues that the request for a price quotation is not a "pricing suggestion" as required in instant claim 15. However, this price quote represents a pricing suggestion for at least one product since the quote is for the price of the sample of the product. As shown in [0034], The user can request a sample of the selected solvent or blend of solvents, and can request a price quotation from a supplier for the solvent. This price quotation represents the "pricing suggestion" since the quote would suggest to the user a price for the product or solvent.

As per claims 11, 20, 13, 16, 17 and 20, appellant makes similar arguments for the Dippold and McConnell references, and these reference are still maintained for the same reasons as discussed above with respect to the Johnson reference.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/A. K. R./

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